



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Rev. Ian Jeremiah, Secretary  
Robert V. Sisca, Member  
Robert F. Grele, Member  
John Margenot, Member

## **Annual Report of the Board of Ethics**

### **Fiscal Year 2018-2019**

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2019. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting by Section 2.12 (c) of the Greenwich Code of Ethics.

### **Executive Summary**

The Board of Ethics responded to two requests for an advisory opinion and one complaint during the 2018-2019 Fiscal Year. Copies of the Advisory Opinions are attached as Exhibits A and B. The complaint was dismissed for failure to describe a violation of the Code.

During the 2018-2019 Fiscal Year, six forms were filed by five Town Officers to disclose financial interests in a Town transaction. All of these were properly notarized. Over the last few years, there has been a significant improvement in the accuracy and completeness of the reports that were filed, as well as a significant decrease in unnecessary filings.

The Board has approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line filing system. This draft has been submitted to the 1<sup>st</sup> Selectman and the Town Attorney for consideration and review. The Board is encouraged by the serious consideration being shown to this proposal.

The Board has benefited from the continuation of budgeted funds to support its operations. A significant portion of this budgetary allowance is intended to cover costs that might be necessary in connection with the preliminary investigation of a complaint, should the need arise. Although the Board did not require the use of such funds this year, the existence of this budget allocation serves as an important indication that the work of the Board will be supported as necessary. We believe that an increase in this budget

allocation would provide further evidence to Town Officers and the public at large that the Board has the necessary means at its disposal to properly address any serious complaint it might receive.

## **Complaints of Violations of the Code**

No complaints were filed with Board of Ethics during the 2018-2019 Fiscal Year. However, a preliminary investigation was conducted during the 2018-2019 Fiscal Year with respect to a complaint filed on June 15<sup>th</sup>, 2018 (at the end of the previous Fiscal Year). As a result of this preliminary investigation, the complaint was dismissed.

The Board recently adopted an updated Statement of Procedures that describes the process by which complaints should be submitted to the Board. The revised Statement of Procedures includes a new complaint form with more detailed instructions than the form used previously. Individuals filing complaints are often unclear about, or inadvertently omit, facts that are essential for the Board to consider in order to determine whether a preliminary investigation of the matter should be commenced. Because of this, the instructions recommend that complainants identify themselves so that the Board can obtain any additional information that may be necessary.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the low incidence of complaints is indicative of a high level of ethical behavior in Town government.

## **Requests for Advisory Opinions**

The Board of Ethics received one advisory opinion request during the 2018-2019 Fiscal Year. This request was made by the director of a Town Department. It asked for guidance concerning service on the client advisory board of a vendor of services to the Town. The position was unpaid and the director believed that service on the advisory board would allow the director to benefit from contact with other members of the board that had responsibilities to government entities similar to the director's duties to the Town. The Board reviewed the terms and conditions under which it felt participation on the Board would be consistent with the Code of Ethics and those under which it felt it would not. A copy of this opinion is attached as Exhibit A.

The Board also provided an opinion during the 2018-2019 Fiscal Year in response to a request that was received in a prior year. This opinion dealt with the responsibilities of members of a Town Commission with respect to voting on certain issues and filing disclosure statements when they, or an entity they were involved with, sponsored or was listed in Commission publications or sponsored events organized by the Commission. A copy of this advisory opinion is attached as Exhibit B.

As in prior years, members of the Board individually and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

## Annual Disclosure Statements

*Review of Filings.* As of July 30, 2019, five Town Officers filed six annual disclosure reports with the Town Clerk covering the 2018-2019 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	1	0	2	3
Not Compliant	<u>3</u>	<u>0</u>	<u>0</u>	<u>3</u>
<b>Total</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>6*</b>

\* 5 individuals reported, one of whom filed multiple reports. One appointed official is also an RTM member, but is reported here only as an appointed official.

There was a significant decrease in the number of reporting persons during the 2018-2019 Fiscal Year. This was due to a decrease in unnecessary filings. However, of the six forms filed with the Town Clerk, two were unnecessary since they reported that they had no interest in a Town transaction and one failed to indicate the value of the interest reported. Therefore, only three were fully compliant with the Code. On a brighter note, the Board has noted improvements in the details given in the compliant filings that are being made.

The very low number of fully compliant forms filed in recent years, however, suggests that additional training is necessary to ensure that all Town Officers are aware when they have an obligation to file. A review of the statements that are filed doesn't allow the Board to judge with any certainty the degree of overall compliance with the Town's financial disclosure requirements. Clearly, with several thousand Town employees and elected and appointed officials covered by the requirements of the Code, it seems likely that more than three will have a financial interest in a Town transaction during a fiscal year.

The Board has questioned for several years whether the reporting system itself may be part of the problem and a more user-friendly reporting system might result in improved reporting. It is likely that the current system seems unduly burdensome to many Town Officers, particularly if they are accustomed to using on-line systems to file other reports or engage in related activities. In addition to the requirement that disclosure statements be notarized, reports are currently only permitted to be filed at the end of the year —up to thirteen months after the transaction being reported on may have occurred.<sup>1</sup> These requirements may serve as significant disincentives for reporting, especially when

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<sup>1</sup> Town Officers are thus required to keep track of all financial interests that they may have in Town transactions throughout the fiscal year in order to report on them after the close of the fiscal year, which can require record keeping and reporting on transactions that are over a year old at the time the filing is made.

the individual may not have convenient access to a notary or the information needed to complete the form may not be readily available at the time he or she is required to make the filing. When the interest being reported (or the likelihood that nondisclosure will be noticed) seems small, some may consider that they will be better off not filing a statement rather than take the risk that they will be held responsible for making an inaccurate statement under oath. As a result, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

*Recommended Changes.* Recently, the Selectmen have considered draft amendments the Code of Ethics to provide for an on-line system of reporting that would allow for filings when an interest arises, rather than at the end of the fiscal year, and eliminate the burdensome and unnecessary requirement that filings be notarized. The Board feels that the adoption of an on-line disclosure system that does not involve notarized statements will improve, rather than degrade, the efficacy of the Town's ethics disclosures and that a system of reporting that provides for disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, will be a more efficacious system for all concerned. We believe that this would be both easier for Town Officers to comply with and provide more timely and useful information to the public.

## **Plans and Recommendations**

*Continuing Initiatives.* The Board serves as a resource for information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board stand ready to assist in training Town Officers and prefers to help Town Officers gain a better understanding the Code by means other than adjudicating complaints. We are anxious to have all Town Officers, as well as the general public, fully understand the who, what, why, when and where of the disclosure process, as well as the other ways in which the provisions of the Code affect them. Toward that end, we will continue to send reminders, prepare reports and maintain current information about the Code and the operations of the Board of Ethics on the Town website during the 2018-2019 Fiscal Year.

The Board also expects to respond expeditiously to requests for advisory opinions. Typically, the issues raised in a request by one Town Officer are faced by others, so the opinions can also provide useful guidance for individuals other Town departments, boards and commissions.

If and when technical amendments are made to the Code of Ethics to provide for an on-line disclosure reporting system, the Board will also stand ready to begin the process of implementing such a system.

*Recommendations.* Following a review of its activities and experiences in the 2018-2019 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

- 1. Adopt Technical Amendments to the Code of Ethics to Modernize the Town's Financial Disclosure Reporting System.** As discussed above, the Board

believes that that requiring disclosure of financial interest is an essential aspect of the Town's ethics policy, but that the current system is outdated and difficult to comply with. However, a change from an annual paper-based reporting system to a contemporaneous on-line reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. The a draft of such technical amendments has reviewed by the Town Attorney and is under consideration by the Selectmen. We would be happy to further assist the Selectmen and the RTM with the process of implementing these amendments.

**2. Continue Training Efforts.** Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to provide training for elected and appointed Town officers with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements. Members of the Board are available to meet with groups of elected and appointed officials who would like to receive additional information concerning the annual disclosure requirement or provide whatever other assistance may be appropriate.

**3. Increase the Board's Budget for Investigative Expenses.** The Code of Ethics requires the Board to investigate any complaint it receives, but until recently there were no funds budgeted to cover any expenses that might be incurred in conducting such investigations. Under the Board's procedures, and as provided by state law, the Board is required to conduct its preliminary investigation (to determine whether there are grounds for a further investigation) on a confidential basis. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of reducing the quality of the investigation by spending less, or compromising the confidentiality of the investigation by requesting additional funds. The Board is pleased to have received an allocation of funds for 2018-2019. These funds proved to be unnecessary and were not be used. However, the amount allocated (\$15,000) was less than the amount that the Board considers advisable to ensure that it can conduct a proper preliminary investigation should the need arise. Therefore, it requests a larger set-a-side of funds for this purpose in the coming fiscal year.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

**September 30, 2019**

## Exhibit A

### Advisory Opinion No. 19-01

**Date:** 9/11/2018

**Topics:** Favor, Financial Interest, Gifts, Vendors

**Code Section:** Section 3

#### **Statement of Facts:**

The director of a Town department has been asked to serve on the “client advisory board” of a Town vendor.

The vendor provides products and services designed for municipal clients. Its website describes its client advisory board as “a collaborative, strategic forum of industry partners to gather input and insights into the technology trends and emerging needs of public sector entities.” It describes the members of the board as “national leaders and innovative thinkers in public sector technology from a variety of municipal cities and counties” and lists the members with their bios. Current members of the board include officials from counties in Arizona, Colorado and Texas, from cities in New York and Rhode Island and from the State of Washington. The director has been advised that the vendor’s goal is to have a ten member board with representatives that reflect a broad geographic cross section of clients.

Service on the advisory board is expected to be unpaid and involve participating in monthly telephone calls at which matters related to the vendor’s service area will be discussed among members of the advisory board, representatives of the company and various experts that the vendor may arrange to participate.

Participation on the advisory board is also expected to involve attendance at two in-person conferences of several days duration each year. In the past, these meetings have been held at the vendor’s headquarters in Manhattan, Kansas, which (although a charming university town) is not generally known as a tourist destination. However, the most recent meeting was held in Buffalo, New York, the location of a member of the advisory board. Thus meetings may be expected to occur at various locations, but the locations are not expected to be tourist destinations and the estimated travel cost of these meetings is not expected to exceed \$2,000 each.

The vendor in question was recently awarded a significant technology contract by the Town, which the director has primary responsibility for overseeing. The

contract was awarded under Section 5.4 of the Town's Purchasing Policy, which permits Departments to enter into contracts for services that have been bid out by non-profits or other governmental units, as long as the contract has the same terms and otherwise meets the standard requirements for Town contracts. The director was not familiar with vendor prior to the procurement process and was not approached about serving on the advisory board until four months after the contract was awarded. The initial contract expired on July 1, 2018 and has been extended for a year. For purposes of this opinion, it is assumed that the director may continue to serve on the advisory board at the time that the next decision to replace or renew the vendor is made.

Part of the director's oversight role will be to approve payments to the vendor aggregating approximately \$20,000 per year. In addition, the vendor provides additional services that may be contracted for by other Town Departments. Some of these services may be directly related to the existing contract (such as training in the use of the product under contract). Others may not be directly related to the contract, but may still relate to services that the director would be expected to assist the Town in evaluating and/or implementing. Therefore, the director sees participation in the vendor's advisory board as useful in making better use of the services the Town has already contracted for and also in developing an understanding of services that may be useful to other Town departments, whether those services are provided by the vendor or not.

In addition, the director feels that participation in the advisory board would be beneficial to the Town in several other ways. To begin with, it would provide the director with a structured way of interfacing with individuals who have similar responsibilities at other municipalities. This would not only allow the director to gain insights from their shared experience as it relates to the vendor's products and performance, but also broader issues that are faced by municipal officials in positions similar to the director. Since the director would undoubtedly form some level of social connection with these individuals in the context of the advisory board's meetings, it seems likely that these contacts would also be able to provide perspectives on shared issues unrelated to the vendor's services and in contexts unrelated to their mutual service on the advisory board. Therefore, the director feels that such relationships could be of value to the Town by growing a network of contacts that could be helpful even beyond the activities of the advisory board.

Also, it is in the nature of technology services today that they evolve rapidly. Only a small percentage of the vendor's many municipal clients are represented on the advisory board. The director feels that participating in the advisory board would provide Greenwich with privileged access to the vendor's product development process, improving the chances that product upgrades would be beneficial rather than problematical to the Town.

The director is aware that participation in the client advisory board may affect the director's perception of the vendor's products and services: "The content of the

meetings might indeed influence my opinion about whether the [vendor's service] remains a viable solution for the Town..." However, the director does not believe that this influence will be the result of a valuable gift or favor: "...that influence would be based solely on the merits [of the product], rather than for personal gain."

The director also believes that service on the Board would be consistent with the director's job description, which includes "*working with internal and external professionals and consultants to analyze requirements and develop new...systems and services.*" In this sense, the director feels that it might be considered part of the director's duties to serve on the advisory board "as long as doing so offers a clear benefit to the Town, is done transparently, and would not involve acceptance of any type of compensation from the vendor for attending."

Although service on the advisory board is unpaid, it can be expected that there will be expenses incurred in connection with serving on the advisory board. The director has discussed the advisory position with the Town Administrator and believes that the benefits of participation in the board would justify the Town in paying the cost of air transportation, meals and lodging in connection with attending the meetings of the board. It can be assumed, however, that certain expenses associated with the meetings themselves, such as local transportation, pads and pencils, refreshments during the meetings and modest meals just before, in between or just after the meetings, may be covered by the vendor. The director has assured the Board, however, that "I would under no circumstances accept from the vendor any type of compensation for attending, such as gift cards, expensive theatre tickets, golf outings or other such entertainment."

### **Relevant Code Provision:**

**Section 3.** GIFTS AND FAVORS. No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.

### **Question Presented:**

Could the acceptance of a position on the client advisory board result in receipt of a "valuable gift, thing or favor" within the meaning of the Code of Ethics that might "tend to influence the performance or non-performance of the director's official duties" in supervising the vendor's contract?

### **Discussion and Conclusion:**

The Board of Ethics has considered invitations to Town Officers to participate in programs or events sponsored by vendors in two prior advisory opinions. In Advisory Opinion No. 04-02, a manufacturer invited a Town Officer in January to attend a "product review" in "the sunny Palm Desert". The invitation stated that it was made "as promised" and that all travel and related expenses would be paid by



the manufacturer. The Board recommended that the Town Officer decline the invitation, noting that:

“Particularly in the case of travel to remote resort locations, there is a possibility that the vendor is covering the cost with the expectation that the Town Officer will consider the opportunity to attend the event as a favor that might influence the performance of his or her official duties.”

Similarly, in Advisory Opinion No. 06-04, the Board indicated that an all-expenses paid invitation to attend a conference in Florida could be seen as a “potential gift or favor”, but indicated that the Town Officer could attend the conference as long as the vendor was not doing business with the Town and was not expected to do business with the Town in the future. It cautioned, however, that the Town Officer’s behavior would be subject to strict scrutiny if the vendor were ever to do business with the Town.

In both of these prior opinions, the vendor involved seems to have been singularly unconcerned with the appearance of undue influence. The meetings were not held in a businesslike setting, but in a resort environment. Nor was the Town expected to have to weigh the benefit to the public against the direct expenditure of public funds. If there was a benefit, therefore, it was clearly to the vendor.

By contrast, in the case of the current request the vendor appears to be sensitive to these concerns. The advisory board is given a mission “to gather input and insights into the technology trends and emerging needs of public sector entities” which is consistent with the interest of the clients as much as the vendor. Participants are expected to have substantial participation from their own workplaces through conference calls. In addition, the locations chosen for the physical meetings appear more logical for the accomplishment of work related objectives than the pursuit of pleasure.

There are clearly elements of the director’s participation in the advisory board that could be seen as favorable to the director. It may provide the director with visibility and professional recognition through the opportunity to network with other professionals. It also offers the director the opportunity to travel at public expense. There are also some expenses that may be expected to be borne by the vendor, such as local transportation to and from working sessions, snacks and refreshments such as coffee, tea, juice and water during meetings and meals served during breaks or otherwise close in time and place to the business activities being conducted. If appropriate discretion is used, however, the Board does not believe that such emoluments should inappropriately influence the director’s job performance.

Although it is not necessarily a day-to-day experience, one would hope that, on occasion, persons who toil in the public interest will find themselves involved in pleasurable or career advancing tasks. Incidental benefit to a public servant is not necessarily harmful to the public interest when it is an ordinary consequence of a

job well done. Thus, the Code of Ethics does not impose an absolute prohibition on the receipt of gifts and favors that are incidental to the performance of official duties. It only prohibits them if they have the potential to influence that performance in a way that places the individual's interest ahead of the public. Where the predominant expense of participation a program or event is approved by a supervisor and paid for by the Town, the Board may presume that the Town Officer's participation is a normal and beneficial part of the Town Officer's job.

This presumption is not absolute, however, and could be put aside in circumstances where the benefit to the Town Officer is clearly disproportional to the public interest or targeted in time and place so as to influence the performance or non-performance of specific official duties. If the director's participation were to involve any of the following, the Board would not be inclined to consider the personal benefit to be inconsequential:

1. Expenses for non-local transportation, such as:
  - a. long distance transport by air, sea or train, or
  - b. use of a rental car or company vehicle for an extended period of time.
2. Meals that are excessively lavish or time consuming.
3. Expenses related to entertainments, such as participation in or attendance at theatre productions or sporting events, such as golf outings, ski passes, races, major league sports or other professional competitions.
4. Drinks and other refreshments or entertainments at an offsite location such as a bar or nightclub.
5. Valuable mementoes such as apparel, glassware, artwork or sports equipment or memorabilia.

Since the director has expressly mentioned this type of possibility, we have assumed that such items will be avoided.

There are also elements of participation in the client advisory board that might influence the director's performance or non-performance of official duties by taking time away from them. While participation on the advisory board could help the director to find new approaches to Town problems or see the need for a change strategic direction, it could also provide a means of deepening personal ties between director and the vendor's representatives, which could cause the director to recommend the use of more services by the Town. Clearly these are issues that the director will need to be sensitive to, but they are issues that public officials are required to deal with on a day-to-day basis and continue to maintain their objectivity.

If the director accepts a position on the vendor's client advisory board, the Board of Ethics would expect the director to follow appropriate procedures in documenting the benefits of the position to the Town, consistent with the good practice of seeking this advisory opinion. The director could submit a written memo to the Town

Administrator prior to attending any out of town meetings, describing the purpose of the travel and including relevant agenda materials, and/or could include a summary of the benefits of attending the meetings in connection with travel reimbursement requests.

The Board would also expect the director to provide written communications to relevant parties describing ways in which the director's telephonic and in person meetings as a member of the advisory board provided insights into how the Town's operations might be improved. These insights might also be summarized in any self-assessment or notes prepared in connection with performance reviews. Sensitivity in reporting back to staff, other directors, the Town Administrator and the 1<sup>st</sup> Selectman about the insights gathered through participation in the advisory board will be important, not only in avoiding the appearance of impropriety, but also in making judgements as to whether continued participation in the advisory board's activities is worth the cost to the Town in time and expense.

The director should also provide a copy of this opinion to the vendor in order to ensure that all parties have consistent expectations.

**See Related: A 04-02, A 06-04**

## Exhibit B

### Advisory Opinion No. 19-02

**Date:** 9/11/2018

**Topics:** Boards and Commissions, Commission on Aging, Events, Disclosure, Financial Interest, Listings, Referrals, Sponsorships, Transaction

**Code Sections:** Definitions, Sections 4 and 5

#### **Statement of Facts:**

The Commission on Aging is a Town department managed by a Director working under the supervision of a group of volunteer commissioners, who are nominated by the Selectmen and appointed by the RTM. References to the “Department” in this advisory opinion are to the Commission on Aging as a Town department, while references to the “Commission” are to the members of the Commission on Aging acting as a Town commission. This advisory opinion has been requested by the Chair and Vice-Chair of the Commission on behalf of all of the members of the Commission.

The Director of the Department is a Town employee, appointed by the Commission, who reports directly to the Commission and the First Selectman. The Commissioners provide direction for the Department, review its activities and its budget and approve various matters related to Department operations. As such, Commission members may be asked to vote on Town actions and transactions or may be in a position to influence such actions or transactions.

In its Mission Statement, the Commission identifies “facilitating education, *information on and referrals about*<sup>2</sup> programs, services and benefits” affecting older Town residents as one of its primary activities. Although the Department engages in a wide range of activities related to the Town’s older residents, its principal activities may be described as follows:

Resource Listings. In carrying out this responsibility, the Department provides a directory of services, entitled “Resource Guide for Older Adults”, which contains a comprehensive listing of services including adult day care, counseling, financial assistance, home care, housing, legal assistance, pharmacies, rehabilitation services, transportation and volunteer organizations.

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<sup>2</sup> Italics added.

The Resource Guide is prepared under the supervision of the Director. It is the policy of the Department to be inclusive, but occasionally service providers are removed from the Guide in situations where the provider has lost accreditation or similar circumstances. Listings in the Resource Guide are done in alphabetical order and contain only non-proprietary contact information for the organizations listed, such as addresses, phone numbers and website addresses (the online version of the Resource Guide provides hyperlinks to the websites). The Resource Guide provides no ratings or other qualitative information about the organizations listed and its introduction contains the following disclaimer:

“The listings in this guide are for informational purposes only and do not constitute an endorsement by the Greenwich Commission on Aging. No investigations have been conducted of the qualifications or quality of the services or programs listed...”

In addition to the Resource Guide, the Department publishes a separate Area Transportation Guide, which consists of a listing in chart form of transportation providers in the area that offer special services for older residents, and a monthly newsletter, which describes programs, activities and events at or sponsored by the Town’s Senior Center, which is operated by the Department. The transportation listing provides a description of the type of service, hours, service areas, eligibility requirements and fees in addition to contact information.

There is no fee to be listed in the Resource Guide or Area Transportation Guide. All of these publications are posted on the Town website and distributed to members of the Senior Center (membership is open to all Town residents aged 62 “or better”).

Referrals. The Department does not have a process by which it evaluates the service and resource providers listed in its guides. When asked for referrals by older residents of the Town or their relatives, the staff has a policy of directing callers to the Resource Guide or providing them with at least three referrals without any expressed preference. There are no formal or informal arrangements with respect to such referrals and no compensation is provided in connection with such referrals.

The Commission may also make available, to individuals requesting such information, brochures or other materials provided to the Commission by service providers. Such materials are also not made available pursuant to any formal arrangement or policy and there is no fee or other compensation involved in the distribution of such materials.

Senior Center and Related Activities. The Department operates a Senior Center in facilities owned by the Town. Activities at the Senior Center are varied and include health, transportation, food and employment services, art and fitness classes and various programs and training sessions related to senior health and wellness. At the Senior Center, the Department provides free individual counseling on Medicare, Medigap and Medicare D insurance options through a partnership with Family Centers, Inc. It also sponsors and provides space for discussions on innovations in elder care through a partnership with Aging 2.0 and provides space for meetings and activities of the Alzheimer’s Association and Utilize Senior Energy, Inc. (a non-profit providing

employment services for seniors). The Department also provides office and meeting space for Liberation Programs, a non-profit alcohol and substance abuse program.

The Department also has arrangements and partnerships with various businesses and non-profit organizations that provide products and services to the elderly. For example, the Department has an arrangement with the Transportation Association of Greenwich to provide transportation to seniors to and from the Senior Center. It also has arrangements with Greenwich Taxi for a “Share the Fare” program that subsidizes taxi fares for elderly residents of the Town. In addition, the Department uses space for its programs at various facilities in town, such as the Greenwich Library and Greenwich Hospital, that are supported by non-profit entities. Members of the Commission and staff of the Department may contribute to, serve as board members or volunteers for, or have business relationships with, these entities.

*Special Events.* The Commission also hosts special series of talks, conferences and other educational events intended to inform the public about issues relevant to its mission or provide opportunities for resource providers to exchange ideas about topics of current interest in the area. Examples of this are its Distinguished Lecture Series and its Caregiver Circle Presents Series. In connection with these events, individuals or organizations may be featured or given other recognition. In partnership with Greenwich Hospital, the Commission and the Greenwich Department of Health also sponsor an annual Health and Wellness Expo, which provides information and services related to senior health. Participation in the Expo may be limited to persons sponsoring the event. Members of the Commission are related in various ways to entities listed in and sponsoring the guides, as well as sponsoring the publications and participating in events.

Arrangements for special series are typically made by the Director, who reports to the Commission about sponsorship arrangements and the details of the events. Generally speaking, the Department does not make payments to individuals or organizations who speak, present or provide materials in connection with its events. However, some individuals may receive compensation for their participation directly or indirectly from their employer, who may be a sponsor or otherwise affiliated with a member of the Commission. In the case of all sponsorships, the Commission makes solicitations broadly from interested parties that are involved with health and other issues involving the aging. However, in some cases as mentioned above, participation as a speaker or presenter may be limited to sponsors.

*Sponsorships.* Sponsorships for the activities of the Department are organized through its friends organization, a non-profit corporation whose purpose is to raise funds to supplement the amounts appropriated by the Town for the Department’s operations. For purposes of this advisory opinion, the Board considers the mechanism by which funds are provided to the Department by sponsors to be inconsequential and considers contributions made to the friends organization as directly benefiting the Department.

Sponsors of the Department’s general activities are given recognition in the Department’s publications. On the covers of the Resource Guide and in a section of the Department’s

monthly newsletters, there is space provided to acknowledge sponsors, most of whom are also listed in the guide. The acknowledgements are given space according to the level of sponsorship, which for smaller sponsors may contain only the name of the sponsor or its logo. The space for larger sponsors may also include artwork, brief descriptions of the services the sponsor provides and feature favorable characterizations of the sponsors services and information about awards and recognitions that the sponsor has received.

It is noted, however, that money is raised separately for the Department's special event series. Contributions for a specific series are treated as dedicated funds, so that if the Department's expenses for the events in the series are less than the amount raised, the remaining funds are reserved for future events in that series. Since some of the for-profit and non-profit sponsors of the series may also participate in certain of the events in the series, care is taken to solicit funds only for the entire series, not for individual events.

### **Questions Presented:**

1. Should the furnishing of non-proprietary contact information to the Department for inclusion in the Resource Guide or Transportation Guide be considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code?
2. Does an individual or entity listed in the Resource Guide or Transportation Guide have a "substantial financial interest" in such guide within the meaning of the Code of Ethics?
3. Can contributions to sponsor the Department's activities or a series of Departmental events be considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code or result in financial interests such that the member may not exert influence or vote on matters related to the activities and series?
4. Is a referral made by the Department considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code?
5. Are the arrangements and partnerships that the Department has with various for-profit and non-profit organizations to provide products or services Town "transactions" for purposes of the Code?

### **Discussion and Conclusion:**

The issues raised in this advisory opinion have provided the Board with an opportunity to take a comprehensive look at a Town department and its operations through the prism of the Code of Ethics. The Commission's careful attention to ethical considerations is part of what keeps Greenwich ahead of the curve on municipal ethics. Therefore, we were not

entirely surprised to find that the Commission, being aware of the issues, had already adopted appropriate safeguards to protect against deviations from the Code.

In its very structure, the Code of Ethics addresses the appearance of conflicts from both the outside and the inside, enjoining Town Officers to avoid *outside* influences in Section 3, and advising on how to deal with *internal* conflicts in Sections 4 and 5. Rather than attempt to detail every conceivable situation that might need to be addressed, the Code contains broad language intended to ensure that the salutary purposes of the Code are not circumvented through an overly technical reading. Instead, the Code contemplates that Town Officers will be able to determine on their own what should be done to best comply with the Code, and will seek advisory opinions when the circumstances are not so clear. Indeed, the Commission's very behavior in requesting this opinion and reviewing the issues with the Board in detail, shows an awareness that the spirit of the Code is to encourage practices to evolve that stand up to examination from the outside as well as the inside.

This opinion relates principally to the internal conflicts addressed in Sections 4 and 5 of the Code because they apply most directly to the way Town Officers conduct themselves as they carry out Town operations. In that regard, a slight difference in the language used in Sections 4 and 5 of the Code must be carefully examined. Section 4 provides that:

*"No town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action."*

while Section 5 provides that:

*"...each town officer having a substantial financial interest in one (1) or more transactions with the town totaling one hundred dollars (\$100.00) or more in the year shall file a written statement disclosing his position..."*

Here the inclusion of Town "actions" in the prohibition against influencing or voting on matters can be contrasted to its absence when the Code specifies what Town Officers are required to report. Evidently, the Code considers "actions" to be more self-directed and limited in duration, so that once they are done there is little value in continuing to monitor them, while "transactions" are viewed as involving more parties and being of longer duration, so that continuing disclosure is beneficial.

Another feature of the Code that is useful to bear in mind is that the Code exempts Town employees from reporting on the employment contract that makes them a Town employee. The report of the special Selectmen's committee that drafted the Code expressed the view that this exemption was to avoid having all Town employees have to report every year just to "state the obvious". Consequently, it seems clear that the purposes of the Code are not furthered by taking such a broad reading of the term "transactions" that it would require a quantum increase in filings which merely stated the obvious.



The logic of these provisions will be important to keep in mind as we review the various activities of the Department and the Commission.

*1. Furnishing non-proprietary contact information for inclusion in the Resource Guide and Transportation Guide.*

The Commission's Resource Guide contains over 500 listings, each of which has limited information, such as the name of the service provider, its physical and web addresses and its telephone number. It should be noted that this is information the provider typically makes publicly available as a matter of course in doing business. As described in the Guide, the Commission does not solicit information for the purpose of rating or otherwise approving a service provider. The only reason for excluding a listing is if the provider loses the appropriate license or accreditation to provide the service being listed. As such, the value of the Guide is intended to be its comprehensiveness in identifying who is providing a particular type of service in the area.

The process of collecting this information for use in the Guide involves a request from the Department and a confirmation or transfer of information from the service provider in response. If this process is seen as a transaction between the Department and the provider, the Code of Ethics would require any Town Officer with a financial interest in the provider to file statement disclosing that interest in the year the information is provided or confirmed.

The Board of Ethics does not consider this process to involve a transaction within the meaning of the Code, however. It must be noted that the definition of "transaction" in the Code of Ethics is less expansive than the typical dictionary definition. In pertinent part, it defines a transaction as follows:

Transaction shall mean and include the offer, sale or furnishing of any real or personal property, material, supplies or services by any person, directly or indirectly, as vendor, prime contractor, subcontractor or otherwise, for the use and benefit of the town for a valuable consideration...

Since the process of collecting information for inclusion in the Resource Guide involves the furnishing of information (which may be considered *personal property* or *material*) for the *use* of the Department, there are some transactional elements to the exchange. However, the request for information from the Department creates no obligation on the provider to respond. Moreover, by the terms of the request<sup>3</sup>, the furnishing of information by the responder creates no obligation on the part of the Department to include the provider in the Resource Guide. The process is simply a Town action and a response (or non-response) to it.

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<sup>3</sup> There may be reasons why the Department would feel obliged to include a provider's listing in the Resource Guide, but they do not derive from the process of making the request or receiving the information. Rather, they are a result of a decision to compile the guide made without regard to any transaction between the Department and those listed in the guides.

It can easily be seen that the process of providing information for the Guide is not unlike the process that many Town residents routinely go through in providing reports to the Town from which it collects information. If the information provided to the Town is simply collected for reporting purposes or to measure compliance with tax or regulatory requirements, it does not involve the reciprocity of interest that the Code contemplates in connection with a Town transaction.

The activity of the Department in compiling the Guide by itself can be compared to the activity of a private vendor who might offer the service of collecting the information contained in the Guide in return for a fee. In the latter case, the contract between the Town and the vendor would clearly be considered a transaction for purposes of the Code, because the vendor would have continuing obligations to fulfill in order to satisfy the contract and the Town would have the obligation to provide valuable consideration in exchange for the information it received. By contrast, when the Department collects the information, the individual exchanges of information with the entities listed result in no obligation on the Town. Their involvement is brief and the activities of neither the reporting entities nor the Town results in any continuing obligation for either party.

Since the exchange of information involved in compiling the Guide does not involve the reciprocity necessary to be considered a transaction for purposes of the Code, the individuals and entities listed in the Code are not required to file a disclosure statement under Section 5 of the Code disclosing their interest in the listing<sup>4</sup>.

2. *The financial interest of individuals or entities listed in the Resource Guide and Transportation Guide.*

While the persons or entities listed in the Resource Guide and Transportation Guide are not considered to be engaging in a *transaction* with the Town by providing the listing information, any interest that they would have in the *action* of the Town in publishing the listing is still of consequence, particularly if relates to any involvement they might have in the content of the publication. This is because Section 4 of the Code prohibits Town Officers from using their office to exert influence on both *transactions* and *actions* in which they have a financial interest.

It is important here to distinguish between the interest of an individual or entity in their own listing, as compared with an interest in the publication of the listings in the guides as a whole. The prohibition against exerting influence or voting on matters in which there is an interest is not a blanket prohibition. Rather the Code distinguishes between a financial interest that is personal and one that is common to the interest of other citizens of the Town:

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<sup>4</sup> Of course this relates solely to the interest in the listing itself and does not excuse them from filing a disclosure statement to disclose other interests, such as an interest in advertising space provided to sponsors in the guide as discussed in item 3 below.

Substantial financial interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the town.

As a comprehensive, non-evaluative listing of providers, the Resource Guide is carefully designed to benefit the whole community without providing any particular advantage to a specific provider or group of providers. Therefore, matters relating to the publication of the Guide as a whole, such as approving the overall budget for its publication and distribution or discussing the general format, layout and design of the Guide, are matters that a member of the Commission may discuss and vote on as matters in which other citizens of the Town have an interest.

A specific listing may result in business opportunities, however. A Commission member could have an interest in matters directly related to that specific listing if it is about them or an entity that they have a financial interest in. Therefore, members who have an interest in a specific listing should bear in mind that it is the commonality of interest which permits them to discuss and vote on matters related to the Resource Guide and Transportation Guide generally. If there is a matter under consideration that specifically affects a listing in which they have a personal interest, such as whether that listing (or a competitor's listing) or the category that includes that listing should be included in or excluded from the guides, it is appropriate to refrain from any discussion of or vote on the matter.

In Advisory Opinion 09-03, the Board suggested safe harbor procedures for RTM Members dealing with committee matters in which they had a non-community interest that was more than nominal. The Board has also provided general guidance as to the handling of by members of boards and commissions in Advisory Opinion 16-01. Similar considerations would apply to members of the Commission. Best practices would suggest that a member who has such an interest immediately notify the Chair of the Commission about the interest as soon as he or she becomes aware of it. The Chair should then ensure that all other members of the Commission and staff of the Department are made aware of the conflict and advised not to discuss the matter with the affected member<sup>5</sup>. In addition, the minutes of any meeting dealing with the matter should indicate that the affected member had the conflict and left the room during discussion and vote.

In summary then, the Board recognizes that individuals and entities listed in the Resource Guide or the Transportation Guide have a financial interest in that listing. Where matters

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<sup>5</sup> It goes without saying that after disclosing the interest to the Chair, the member should not have further discussions of the matter with other members of the Commission or the staff of the Department. In Advisory Opinion 09-03, however, the Board did contemplate that members of the RTM could be permitted to address the RTM or a Committee with respect to a matter in which they have an interest, so long as the interest is publicly acknowledged and the information given is in the form of testimony rather than discussion. Obviously, the representative role of RTM members was paramount in the Board's consideration in that instance. But the Board does believe that, in rare instances, a similar exception might be made in a Commission meeting. In that case, the Commission would have to determine that the member had unique knowledge that would be useful in making the decision, that the appearance would be limited to testimony and that the testimony would have to clearly be limited to informing the Commission, rather than influencing it.

of general applicability are concerned, such interest may be in common with other citizens of the Town, thus relieving them of the obligation to refrain from discussing or voting on such matters. Where a matter may affect that specific listing, or that of a competitor, however, restraint should be exercised.

### *3. Sponsorship Contributions.*

Sponsorship of the Department's activities is recognized in various ways. As can be seen from our previous discussion, the mere donation of money, goods and services will not result in a Town transaction for purposes of the Code of Ethics unless the Town enters into a reciprocal relationship that provides valuable consideration to the donor. Acknowledgement of sponsors and disclosure of the amount given should be expected by contributors to governmental entities. Thus, a simple listing of donors by category in Departmental publications or program materials should not be seen as a valuable consideration that turns and otherwise free and unencumbered donation into a formal transaction.

Where the Department makes commitments to provide additional space to display proprietary logos and advertising messages in its publications, or makes commitments with regard to placement, naming rights and levels of participation in program activities, however, valuable consideration may be associated with a sponsorship contribution. To the extent that valuable consideration is received, a transaction will occur for purposes of the Code. This may require Town Officers to make reports under Section 5 of the Code and recuse themselves from participating in discussions and votes concerning the sponsorships under Section 4 of the Code.

The Code of Ethics defines substantial financial interests to include any financial interest that is "more than nominal". Where sponsors receive accommodations in consideration of their sponsorships, it seems likely that the interest will be considered more than nominal. Members of the Commission who have such an interest will need to be sensitive to a greater range of issues related to the Department's publications and events than those whose interest derives from merely being listed. Their interest may extend to matters of content, design, distribution and organization. As outlined above, steps should be taken to avoid participation in discussions or votes that could have an impact on the member's interest.

### *4. Interests in referrals and promotional materials.*

As indicated above, staff members of the Department normally respond to requests for referrals from older residents or members of their families by providing them with copies of the Resource Guide. In circumstances where a more specific referral is appropriate, the Department has a policy provide at least three referrals, with no preference expressed. The Department also accepts promotional literature from service providers, which it makes available at its offices and at certain of its events. As with listings and referrals, the primary interest of the Department in making this literature available is informational.

A formal contract is not required to create a transaction for purposes of the Code. In Advisory Opinion 09-02, an established course of conduct was found to result in a Town transaction despite the absence of any formal arrangement.<sup>6</sup> However, the Department's neutral policies with respect to referrals and the distribution of promotional materials prevent the creation of the reciprocal kind of relationship contemplated by the Code in its definition of "transaction".

As with the solicitation of information for the guides, the exchange of information involved with a referral arises out of the day to day operations of the Department and is prompted by the immediate circumstances. There is no assurance, and can be no advance expectation, that a referral will be made at a particular time or to a particular person. The party to whom the referral is made has provided no service to the Town in exchange for the referral and the Town receives no consideration from either them or the person requesting the referral. Similarly, unless the Department has an established understanding with a provider that it will undertake to make its promotional materials available to persons attending events or visiting its offices, the arrangement by which it makes these materials available is not reciprocal enough to involve a Town transaction. The policy of making the information freely available underscores the fact that the Town has provided no valuable consideration for the material.

The Department provides no assurance to providers that it will make referrals to them or disseminate their promotional materials. It is free to discontinue the policy and its only obligation is to make referrals in a neutral way and treat everyone who provides materials fairly. Thus the activity of the Department in giving a particular referral or making promotional material available lacks the reciprocity to be considered more than a Town action. Accordingly, the Board does not believe that Town Officers with an interest in referrals made, or promotional materials distributed by, the Department under its current policies are required by Section 5 of the Code to file a disclosure statement as to such interest.

It is important to note, however, that the Department's neutral policies do not remove an individual or entity from having a financial interest in the referral or the materials being made available. Clearly, the distribution of a provider's promotional materials or the inclusion of a provider among those referred may result in the initiation of a valuable business relationship. Therefore, members of the Commission who are involved with these activities need to be sensitive to the possibility that the Code of Ethics will prescribe their involvement in discussions or votes related to them. It is likely that the Commission would normally deal only with general policies and matters relating to referrals, as to which the Commissioners' interests would be common to other citizens of the Town. Members of the Commission who have an interest in such referrals and promotional materials should be sensitive, however, to the fact that the impartial behavior of the Department is less evident in this instance than it is with respect to the listings in the Resource Guide and Transportation Guide. It is difficult to imagine a matter concerning referrals or the promotional materials that would reach the level of

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<sup>6</sup> A regular pattern of the Town paying for instruction provided at sports clinics was found to result in a Town transaction despite the absence of any formal arrangement.

Commission involvement that could not be seen as in some way affecting the personal financial interest of a Commission member whose firm was providing promotional materials or eligible to receive referrals. In any such matter, the Commission member would do best to follow the procedures outlined above for being recused from involvement in the matter.

#### *5. Arrangements and Partnerships.*

Many of the services provided by the Department are conducted jointly or through arrangements with other agencies and organizations, including for-profit and non-profit entities. Typical of these relationships is a spirit of cooperation and mutual trust in achieving a worthwhile goal. Often the services are provided through mutual accommodations and undertakings that have evolved over time and are not the result of formal negotiations or written agreements.

As discussed with respect to referrals and promotional materials, the Board has found that a transaction can be created through an established course of conduct that involves reciprocity. Although the circumstances in Advisory Opinion 09-02 provided for a cash payment by the Town, the Code clearly contemplates an exchange of “valuable consideration” other than cash<sup>7</sup>. The provision of office, meeting or event space, or supplies, personnel, technical assistance, information or other resources by the Town to a third party could therefore be seen as valuable consideration in the context of a reciprocal relationship.

The Board is not prepared to say that the characterization of a relationship as a “partnership” necessarily establishes that there is a transaction. Nor is it prepared to say that no transaction exists simply because there is an absence of language suggesting a contractual relationship, or because coordination of activities is a natural result of shared values and objectives. As shown above, each joint activity must be carefully examined to see if the Town has a reciprocal relationship that involves valuable consideration being given by the Town in exchange for property material, supplies or services from another party.

Members of the Commission who are involved with an entity participating in such an arrangement should consider carefully whether the arrangement could be viewed as a transaction for purposes of the Code of Ethics and whether they may have a personal financial interest in the entity. In this regard, it is important to bear in mind that one’s financial interest as an employee, board member, manager or major donor to a non-profit organization is not the same as the organization’s interest itself. With a for-profit entity, the principal objective of turning a profit is obvious, as is the financial interest in that entity held by an owner, partner, contractor or employee. With a not-for-profit entity,

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<sup>7</sup> It is obvious that joint endeavors and arrangements with other Town entities, such as the Department of Health, Nathaniel Witherell or the Library, do not involve a Town transaction, within the meaning of the Code. While one department or agency of the Town may provide valuable assistance to another, the Town as an overall entity cannot *receive* value that it has *created* itself.

however, the financial interest of a major donor, board member, volunteer manager or employee is not aligned with the principal objective of the entity in the same way.

In Advisory Opinions 95-01, 00-02 and 04-4, the Board dealt with the financial interest of board members, managers, donors and volunteers of non-profit organizations engaged in transactions with the Town. The separate financial interest of an employee is apparent, since they derive monetary compensation from the organization. But the Board has indicated that others can also have a financial interest in the strength and management of a non-profit organization that is separate from its own interest in achieving its non-profit objectives. Thus a major donor has a financial interest in the donation being well spent. A board member or volunteer manager has an interest in the organization's sound financial management. These financial interests are personal to them even if they are related to their interest in the objectives of the organization.

If a member of the Commission is involved with an entity that has a partnership or other arrangement with the Department, he or she will need to analyze the arrangement to determine if one or more transactions results from it. Then, for purposes of determining whether they have reporting or recusal obligations under the Code, the member will also need to evaluate his or her own involvement with the organization to see whether a financial interest exists as a result of that involvement. Such an interest would require a disclosure statement to be filed. If it exists, the member may also need to be recused from discussions and votes with regard to the arrangements.

Greenwich relies on both the openness and discretion of Town Officers to achieve adherence to its ethical standards. A review of the issues raised in this opinion demonstrates the sensitivity of the Commission to those issues. The Board takes confidence in the fact that the Commission has taken many steps to avoid the concerns addressed by the Code and is encouraged to believe that, in seeking this opinion, it will continue to evolve procedures designed to minimize any appearance of personal self-interest in the Commission's activities.

The Board is also pleased to have had the opportunity to address a number of issues that relate to the unique ways that Greenwich conducts its Town affairs. We hope that this opinion can be instructive in providing guidance to all Town Officers who may find themselves facing similar issues. Of course, the circumstances applicable to each particular Town department, commission, board or other entity will be different, and appropriate modifications and clarifications to the above guidelines will need to be made. The Board stands ready to address such modifications and clarifications as they relate to other aspects of Town government.

**See Related: A 95-01, A 00-02, A 04-04, A 09-02**